

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAYMOND LLOYD SWADLING,

Defendant-Appellant.

UNPUBLISHED

March 13, 2003

No. 238118

Charlevoix Circuit Court

LC No. 01-060009-FH

Before: Kelly, P.J., and White and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of operating a vehicle under the influence of intoxicating liquor (OUIL), third offense, MCL 257.625(6)(d), entered after a jury trial. Defendant's single challenge is to the sufficiency of the evidence. We affirm.

At trial, at which defendant represented himself, the evidence showed that state police troopers observed defendant's pickup truck abruptly swerve off the road, return to the road, and cross the fog line. The trooper who stopped defendant's vehicle noticed a strong odor of alcohol about defendant's person, and observed that defendant's movements were slow and uncoordinated, his speech was slurred, and his eyes were bloodshot. Defendant volunteered to the officer that he had consumed an excessive amount of alcohol, and stated that he was taking Claritin D, a prescription medication. Defendant failed a series of field sobriety tests, and was arrested for OUIL. The troopers opined that defendant was intoxicated and that his ability to operate his vehicle was lessened by his consumption of alcohol. The evidence showed that the alcohol content in defendant's blood sample was .19%.

In reviewing the sufficiency of the evidence, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the offense were proven beyond a reasonable doubt. We do not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1201 (1992); *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002). A trier of fact may make reasonable inferences from evidence in the record, but may not make inferences completely unsupported by any direct or circumstantial evidence. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

To establish the offense of OUIL, the prosecutor must prove that: (1) the defendant was operating a motor vehicle on a highway or other place open to the general public; and (2) the defendant operated the motor vehicle under the influence of intoxicating liquor or with a blood alcohol content of .10% or more. Operating a vehicle under the influence of alcohol means that as a result of consuming alcohol, the defendant's ability to operate a motor vehicle in a normal manner was substantially lessened. CJI2d 15.2; CJI2d 15.3.

Defendant argues that insufficient evidence was produced to support his conviction. We disagree and affirm defendant's conviction. The evidence showed that defendant's truck swerved abruptly off the highway, and then returned to the highway and crossed the fog line. A trooper noted a strong odor of alcohol about defendant's person, and observed that his eyes were bloodshot, that his speech was slurred, and that his movements were uncoordinated. Defendant failed several field sobriety tests. The troopers stated that defendant exhibited many of the characteristics of an intoxicated person. Defendant's blood alcohol content was .19%. It was undisputed that the sample was drawn nearly two hours after the traffic stop; however, the passage of time between the drawing of the blood and the testing of the sample goes only to the weight of the evidence. *People v Campbell*, 236 Mich App 490, 506; 601 NW2d 114 (1999). While defendant maintained that his ingestion of Claritin D impaired his ability to think clearly and that his act of turning his head to look at the bed of his truck caused him to swerve off the road, the evidence was sufficient to support the jury's conclusion that defendant was driving under the influence. The jury was entitled to accept the troopers' testimony regarding defendant's behavior, the evidence regarding the alcohol content of defendant's blood, and defendant's own statement that he had had too much to drink. Viewed in a light most favorable to the prosecution, the evidence supported defendant's conviction of OUIL, third offense. *Wolfe, supra*.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Helene N. White
/s/ Joel P. Hoekstra